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PART IV

Acts of Gujarat Legislature and Ordinances promulgated and Regulations made by the Governor.

The following Act of the Gujarat Legislature, having been assented to by the Governor on the 2nd March, 2023 is hereby published for general information.

K. M. LALA,
Secretary to the Government of Gujarat,
Legislative and Parliamentary Affairs Department.

GUJARAT ACT NO. 2 OF 2023.

(First published, after having received the assent of the Governor, in the "Gujarat Government Gazette", on the 3rd March, 2023).

AN ACT

to prevent unfair means and leakage of question paper in public examination and to provide for matters connected therewith or incidental thereto.

It is hereby enacted in the Seventy-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Gujarat Public Examination (Prevention of Unfair Means) Act, 2023.
- (2) It shall come into force on such date, as the State Government may, by notification in the *Official Gazette*, appoint.
2. In this Act, unless the context otherwise requires,-
 - (a) "conduct public examination" means and includes preparation, printing, supervision, coding, processing, distribution of question papers, evaluation, declaration of result, etc.;

Short title and commencement.

Definition

- (b) “examinee” means a person who has been granted permission by examination authority to appear in the public examination and includes a person authorized to act as scribe on his behalf in the public examination;
- (c) “examination authority” means an examination authority as specified in the Schedule or such other authority as may be specified by the State Government by notification in the *Official Gazette*;
- (d) “examination center” means such premises, as may be specified by the examination authority to conduct public examination;
- (e) “inspection team” means persons authorised by the examination authority to inspect any examination center;
- (f) “organized crime” means an unlawful activity committed by a person or a group of persons indulging in unfair means to pursue or promote a shared interest for wrongful gains;
- (g) “public examination” means any examination conducted by the examination authority as specified in the Schedule or conducted by such other authority as may be notified by the State Government under clause (c);
- (h) “Schedule” means the Schedule appended to this Act;
- (i) “State Government” means the Government of Gujarat;
- (j) “supervisory staff” includes persons authorised by the examination authority to conduct public examination;
- (k) “unfair means” includes,-
- (i) in relation to any person including an examinee,
 - (a) to impersonate or leak or attempt to leak or conspire to leak; or
 - (b) to procure or attempt to procure or possess or attempt to possess question paper in unauthorised manner; or
 - (c) to solve or attempt to solve or seek assistance to solve or to assist to solve question paper in unauthorised manner;
 - (ii) directly or indirectly assists the examinee in any manner whatsoever, in the public examination for monetary or wrongful gains, in relation to any person other than examinee.

Prevention of use or indulgence in unfair means.

3. No person shall use or indulge in any unfair means in any public examination or the conduct of public examination.

Unauthorised help received by the examinee.

4. (1) If the examinee, during the public examination, takes an unauthorised help from any person directly or indirectly or from any material written, recorded, copied or printed, in any form whatsoever, or use of any unauthorised electronic or mechanical instrument or gadget, he shall be referred to the examination authority and the decision of the examination authority in such case shall be final.
- (2) Notwithstanding anything contained in this Act, in case an examinee appearing in the public examination other than the examination conducted for the recruitment, by the Gujarat Secondary and Higher Secondary Education Board or the State Funded Universities, has committed any offence under this Act, he shall be referred to the Gujarat Secondary and Higher Secondary Education Board or as the case may be, to the concerned University and the decision of the Gujarat Secondary and Higher Secondary Education Board or concerned University, in this case shall be final.

5. No person authorised by virtue of his duties in conduct of public examination shall, before the time fixed for opening and distribution of question papers-
- (a) open, leak or procure or attempt to procure, possess or solve such question paper or any portion or a copy thereof; or
- (b) give any confidential information or promise to give such confidential information to any person or examinee, where such confidential information is related to or in reference to such question paper.
6. No person who is not lawfully authorised or permitted by virtue of his duties to do so, shall, before the time fixed for the distribution of question papers-
- (a) procure or attempt to procure or possess, such question paper or answer sheet or OMR sheet or any portion or copy thereof in any form; or
- (b) impart or offer to impart, such information which he knows or has reason to believe to be related to, or derived from or to have a bearing upon such question paper.
7. No person, who is entrusted or engaged with any work pertaining to public examination shall, except where he is permitted by virtue of his duties so to do, directly or indirectly reveal or cause to be revealed or make known to any other person any information or part thereof which has come to his knowledge by virtue of the work being so entrusted to him.
8. No person who is not entrusted or engaged with the work pertaining to the public examination or conduct of public examination or who is not an examinee, shall enter the premises of the examination centre.
9. No person who is entrusted or engaged with the work pertaining to the public examination shall use or cause to be used any place, other than the examination centre, for the purpose of holding public examination.
10. (1) Whenever an offence under this Act has been committed by the Management or Institution or Limited Liability Partnership or others, every person who at the time the offence was committed, was in-charge of, or was accountable to the Management or Institution or Limited Liability Partnership or others for the conduct of the business of the Management or Institution or Limited Liability Partnership or others, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
- Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act, if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by the Management or Institution or Limited Liability Partnership or others and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, partner, manager, secretary or other officer of the Management or Institution or Limited Liability Partnership or others, such director, partner, manager, secretary or other officer shall also be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Unauthorised possession and disclosure of question paper.

Unauthorised possession or disclosure of question paper and answer sheet or OMR sheet in any form.

Prevention of leakage by person entrusted or engaged with examination work.

Prohibition to enter examination centre.

No place other than examination center shall be used for public examination.

Offence by management, institution or others.

- Prohibition to assist.** 11. No person who is on the management or on the staff of an institution which is being used for the holding of a public examination, or who is entrusted with any work pertaining to public examination, shall provide any help or assistance to an examinee in using unfair means in the public examination.
- Offences and penalties.** 12. (1) Any examinee indulging in unfair means shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine, which shall not be less than one lakh rupees and in case of default of payment of fine, such examinee shall also be punished with imprisonment in accordance with the provisions of the Code of Criminal Procedure, 1973. **2 of 1974.**
- (2) If any person obstructs or threatens any member of the inspection team, supervisory staff, examination authority, officer or person appointed by the examination authority for performing duty or from entering any examination centre, he shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees and in case of default of payment of fine, such person shall also be punished with imprisonment in accordance with the provisions of the Code of Criminal Procedure, 1973. **2 of 1974.**
- (3) If any person, including examinee, whether entrusted or authorized with the conduct of public examination or not, in conspiracy or otherwise indulges or attempts to indulge in unfair means or contravenes or abets to contravene any of the provisions of this Act, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment of ten years and shall also be liable to fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and in case of default of payment of fine, such person shall also be punished with imprisonment in accordance with the provision of the Code of Criminal Procedure, 1973: **2 of 1974.**
- Provided that the Court may for any adequate and special reasons to be recorded in writing impose a sentence of imprisonment for a term of less than five years.
- (4) If any person in an organized crime in conspiracy with the examination authority or otherwise indulges or attempts to indulge in unfair means or contravenes or abets to contravene any of the provisions of this Act, he shall be punished with imprisonment for a term which shall not be less than seven years and may extend to ten years and with fine which shall not be less than one crore rupees and in case of default of payment of fine, such person shall also be punished with imprisonment in accordance with the provision of the Code of Criminal Procedure, 1973. **2 of 1974.**
- Debarred on conviction.** 13. An examinee who has been convicted of an offence under the provisions of this Act shall be debarred from any public examination for a period of two years.
- Attachment and confiscation of property.** 14. In case of conviction of a person in an organized crime in conspiracy with the examination authority or otherwise indulges or attempts to indulge in unfair means or contravenes or abets to contravene any of the provisions of this Act, the court shall make an order of recovery of any wrongful gains made by such person, by way of attachment and sale of any of the assets/property, moveable, or immovable, or both, of such person by following the procedure laid down in the Code of Criminal Procedure, 1973. **2 of 1974.**
- Liabilities of Management etc. to pay all cost and expenditure.** 15. If any person of the Management or Institution or Limited Liability Partnership or others has been found guilty of the offences under this Act, the Management or Institution or Limited Liability Partnership or others shall be liable to pay all cost and expenditure related to the public examination, determined by the Court and shall be banned forever.
- Public servant.** 16. Every person engaged in the conduct of the public examination, while acting or purporting to act in pursuance of the provisions of this Act or rules made thereunder, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. **45 of 1860.**

17. All offences specified under this Act, shall be cognizable, non-bailable and non-compoundable. **Offences to be cognizable, non-bailable and non-compoundable.**
18. Any offence committed under this Act shall be investigated by the Police Officer not below the rank of Police Inspector but preferably by the Deputy Superintendent of Police. **Investigation of the offences.**
19. The provisions of this Act shall be in addition to, and not in derogation of, any other law in force on the subject. **Application of other laws not barred.**
20. No suit, prosecution or other legal proceeding shall lie against the State Government or any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder for the conduct of public examination. **Protection of action taken in good faith.**
21. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act. **Power to make rules.**
- (2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be they are made, and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make, during the session in which they are so laid or the session immediately following.
- (3) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.
22. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, within a period of two years from the commencement of this Act, by an order published in the *Official Gazette*, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removal of difficulty. **Power to remove difficulties.**
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before the House of the State Legislature.

SCHEDULE

(See section 2(c))

1. The Gujarat Public Service Commission.
2. The Gujarat High Court.
3. The Gujarat Subordinate Services Selection Board.
4. The Gujarat Panchayat Service Selection Board.
5. The State Examination Board.
6. Any other authority or agency or recruitment committee or Board engaged or constituted by the State Government.
7. State Funded Universities.
8. The Gujarat Secondary and Higher Secondary Education Board.
9. Public Sector Undertaking owned by the State Government.
10. Any Societies, Corporations, Local Bodies and all PSU's owned substantially or partially by the State Government.



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